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Canada. Capital and Corporal Punishment on
Lotteries, Joint Cttee. of the Senate and the
House of Commons on, 1954

FIRST SESSION—TWENTY-SECOND PARLIAMENT
1953-54



Joint Committee of the Senate and the House of Commons

ON

CAPITAL AND CORPORAL PUNISHMENT AND LOTTERIES

Joint Chairmen:—The Honourable Senator Salter A. Hayden

and

Mr. Don F. Brown, M.P.

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 15

TUESDAY, MAY 25, 1954

WITNESS:

Commissioner L. H. Nicholson, Royal Canadian Mounted Police.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1954



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Mr. F. T. Fairey	Mr. Phillippe Valois
Mr. E. D. Fulton	Mr. H. E. Winch
Hon. Stuart S. Garson	

A. Small,
Clerk of the Committee.



MINUTES OF PROCEEDINGS

TUESDAY, May 25, 1954.

The Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries met at 11.00 a.m. The Joint Chairman, the Honourable Senator Hayden, presided.

Present:

The Senate: The Honourable Senators Hayden, Hodges, McDonald, Roebuck and Veniot.—(5).

The House of Commons: Miss Bennett, Messrs. Boisvert, Brown (*Brantford*), Brown (*Essex West*), Fairey, Fulton, Mitchell (*London*), Shaw, Thatcher, and Winch.—(10).

In attendance: Commissioner L. H. Nicholson, Royal Canadian Mounted Police; and Mr. D. G. Blair, Counsel to the Committee.

The Presiding Chairman introduced Commissioner Nicholson.


Commissioner Nicholson made his oral presentations on capital and corporal punishment and lotteries and was questioned thereon.

On behalf of the Committee, the Presiding Chairman thanked the witness for his presentations.

The witness retired.

At 12.25 p.m., the Committee adjourned to meet again as scheduled at 4.00 p.m., Thursday, May 27, 1954.

A. SMALL,
Clerk of the Committee.



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EVIDENCE

TUESDAY, May 25, 1954
11.00 A.M.

The PRESIDING CHAIRMAN (*Hon. Mr. Hayden*): Ladies and gentlemen, we have a quorum. I will call the meeting to order.

I should tell you that at the next meeting, next Thursday at 4.00 p.m., we are having Dr. Malcolm S. MacLean of Welland. He took part in the Open Forum on Capital Punishment of the Ontario section of the Canadian Bar Association last February, and I think you will find him well worth while listening to.

This morning we have Commissioner Nicholson of the R.C.M.P. Which subjects are you dealing with, Commissioner?

Commissioner L. H. Nicholson, Royal Canadian Mounted Police, called:

The WITNESS: I am prepared to say something on the three subjects if you wish me to.

The PRESIDING CHAIRMAN: The order of reference is, capital punishment, corporal punishment, and lotteries.

The WITNESS: Perhaps I could take capital punishment first.

My statement on capital punishment, Mr. Chairman, ladies and gentlemen, is:

1. I would first like to make it clear that the views I express here are my own personal views. I have made no canvass but I do think what I say here would be in harmony with the opinions of many, if not most, of the officers of the force.

2. I believe that capital punishment, however harsh and distasteful it may be, is still a necessary part of our legal machinery. I also believe there should be periodic surveys of the situation to determine if changing conditions lessen the need for this extreme punishment or indicate a better method of imposing it.

3. The particular factors in support of my opinion which I should like to mention are:

- (a) The need to keep both the certainty and the severity of our law-enforcement standards at least on a level with those found in the United States, if we are to avoid making Canada both a refuge and a new field of operations for gangsters from that country.

- (b) The deterrent effect of the threat of the death penalty upon our own professional criminals.

4. In my view the present law provides so many effective safeguards that the possibility of an innocent person being condemned and executed is so remote that it is, from a practical standpoint, negligible. The possibility of the death penalty being imposed upon a person properly convicted for a slaying but where the circumstances and precedents indicate a lesser type of punishment is, in my opinion, similarly remote.

5. As to the threat of an influx of gangsters from the United States, we know that as water finds its own level these people will flow into any area which offers

(a) profitable operations; and

(b) the least risk of certain *and severe* punishment.

I fear that the abolition of the death penalty in Canada would not go unnoticed in gangster circles in the United States.

6. Our own professional criminals—robbers, hold-up men, safeblowers and the like—are, I am convinced, very conscious of the present difference between the punishment for murder and that which they face for lesser crimes. I know, for instance, that many safeblowers do not carry arms because they do not want to risk committing a murder if interrupted on the job. Likewise, in the heyday of liquor smuggling in Ontario, Quebec and the Maritimes we had few shootings and that, I am sure, was because the smuggler was very much alive to the difference between jail, if he was caught with a load of contraband, and hanging, if he was convicted of murder. Alter the law, make life imprisonment the maximum for murder, and what do we find in the case of let us say a professional safeblower with a long record and forty-five to sixty years of age. If caught and convicted of safeblowing he is liable to fourteen years' imprisonment and, if found to be a habitual criminal, to an indefinite term at the discretion of the executive. From this standpoint then, why should he not take a chance on shooting his way out if interrupted. What difference, especially at his age, between a life sentence if the worst happens, and fourteen years or more if he does not resist and is caught. Certainly the difference is not enough to stop him from shooting if the merchant or the policeman comes along and threatens his getaway.

7. For these reasons I am of the opinion that we have not yet reached the time when capital punishment can be abolished.

The PRESIDING CHAIRMAN: We will hear the three papers and then we will have the questions.

The WITNESS: This is my statement on corporal punishment:

I believe that corporal punishment should be retained for imposition at the discretion of the court in the case of young offenders who commit vicious, cruel crimes and who threaten to become incorrigible.

I believe this type of punishment should also be retained for use as a disciplinary instrument in jails and penitentiaries.

Statement re lotteries.

As a matter of personal opinion I dislike the thought of any marked extension of public gambling facilities. My reasons for this dislike are the same as those already explained before the committee, notably by my friend the Chief Constable of Hull.

2. At the same time I think it must be accepted that a large segment of our population want to take part in gambling of the lottery type and have very little respect for our present law. Witness the number who buy Irish sweepstake tickets and, perhaps more significant, the number who buy tickets on draws that are complete fakes and never take place at all. We know of literally hundreds of thousands of dollars worth of such tickets which have been seized—and I should judge that only a small percentage of the over-all distribution is seized. And look at the thousands of people who clamour to get into the big bingo games—games that are essentially lotteries but put on for charity, though operated for the most part by professionals on a hire or share basis.

3. So long as this is the public attitude I think we might as well be realistic and admit, as with prohibition, that good enforcement under our present laws is unlikely, if not impossible.

4. On balance, therefore, I would suggest that you consider extending legal gambling facilities enough to put the marginal, the clandestine and the downright crooked gambling games out of business by providing a legal outlet for the obvious public demand.

5. It would also be well, I suggest, to define principles that will permit the difference between legal and illegal gambling to be clearly distinguishable to the public. These principles might be:

- (a) that no public gambling is allowed unless the funds of the bettors can be protected by reasonable and practical means;
- (b) that no professional gamblers or operators can participate except on a salary basis.

6. If it is accepted, as I think it must be, that a large proportion of the people of this country want to gamble in a modest way and will insist on patronizing illegal games if legal ones are not available, then I submit the aim should be to provide controlled gambling facilities and thus prevent exploitation of the gambling instinct of the public. At the same time if the line of demarcation between legal and illegal gambling can be fixed at a point which is generally acceptable, then I am sure enforcement will be a great deal more effective and efficient than it is today.

The PRESIDING CHAIRMAN: I think we will start the questions today at the right. Mr. Fulton.

By Mr. Fulton:

Q. With respect to capital punishment, Commissioner Nicholson, I drew the impression as you read your paper that your views have been formulated mainly with a view to its effect on the professional prisoner?—A. Yes.

Q. And the point you were making is it deters the professional from putting himself in a position—not always, but to a large extent—where he might become a killer?—A. Yes, that was one of my principal points.

Q. You were not arguing with respect to its deterrent effect in support of a general proposition that it deters even those who were deranged or mentally ill or subject to some provocation?—A. No.

Q. And you, as a policeman and law enforcement officer, I take it base your conclusion that it has a deterrent effect on the professional criminal from experience. You did not refer to actual experiences. But, are your views on the basis of your experience or of theory or partly one and partly the other?—A. Experience.

The PRESIDING CHAIRMAN: Mr. Fulton, have you any questions on the other subjects?

By Mr. Fulton:

Q. I would like to know if the commissioner could assist the committee by enlarging on his views with respect to how we solve this problem of providing legalized outlets for the urge to gamble and at the same time keep our laws sufficiently rigid to give an effective and enforceable system as against the gangster gambler?

The PRESIDING CHAIRMAN: You mean, thus far but no farther.

Mr. FULTON: Yes.

The WITNESS: As to how it might be controlled, if I may I should like to point out to the committee that my force operates as a provincial force in eight provinces and as a municipal force in about 120 odd towns and cities as well as doing our primary job as a federal force. I would be glad if the committee would excuse me from distinguishing as to whether it would be better for the control to be exercised on a federal, provincial or municipal level. I think that the problem presents a number of possibilities. It might be

controlled governmentally; it might be controlled by an extension of the present system of permits to charitable, religious and benevolent organizations; it might be controlled by the licensing of the national organizations; or the charter of organizations in much the same way as the pari-mutuel problem. These are alternatives but I do not wish to indicate which one should be favoured. I do not feel that I am in a position to expand on that aspect. I have always felt however, that tying gambling control with charity and with religion is rather a false front. It gives a false impression. Surely if gambling is wrong, it is not made right by permitting it to go ahead under religious or charitable auspices, and leads I think, to difficulties in interpretation. That would not prevent the administration of some altered system to be placed under religious or charitable organizations. But, I just suggest that connecting gambling—or in effect making it a proper thing by connecting it with religious or charitable organizations—does give the wrong impression.

By Miss Bennett:

Q. I was wondering were you drawing any line of demarcation between the professional criminal and the person who commits murder from an emotional standpoint? Is there anything you could tell us perhaps about a man who commits murder for sex reasons or for some high emotionalism? Have you anything to advance in that respect?—A. Perhaps this may be the answer if I quote a sentence from my statement: "The possibility of the death penalty being imposed upon a person properly convicted for a slaying but where the circumstance and precedents indicate a lesser type of punishment is, in my opinion, remote." I think under our present law there are ample safeguards to protect people who are convicted of a killing, but perhaps fall within the classes you mention.

Q. I was just curious to know whether you had some remedy or suggestion for us in that regard to deal with that other type?—A. No. I feel that the factor of influence on professional criminals is a strong one and I feel that the present machinery presently adequately protects the other classes of murderers.

Q. Then there was the point about keeping ourselves on a level with the law operating in the United States. There are several states that do not impose capital punishment I believe, are there not?—A. Yes.

Q. Do you find in dealing with crime here in Canada that there is any relationship between those states that do not have capital punishment and the number of crimes that are committed there which are of a capital nature. Could you give us any light on that?—A. We have not detected anything in the way of a flow of criminals to Canada from there, or vice versa. The majority of the states do, still, of course, have capital punishment.

By Mr. Thatcher:

Q. I would like to ask Commissioner Nicholson what he would think of establishing degress of murder. You mentioned that you thought there were adequate safeguards today. Would those safeguards become better if there was a first degree murder which would still have a deterrent effect, and then second degree murder for these other offences?—A. I do not think that I would want to make a definite recommendation or give a definite view on that point. I suppose it offers an opportunity for the classification of quite a lot of different types, but it does seem to me that our present machinery accomplishes about that without having a scale of slots to put each case in.

Q. I see. What facts, Commissioner Nicholson, or what thoughts, would you have regarding the method? Do you think it is hanging itself which is the main deterrent, or just execution generally? In other words, would you have any comment to make on whether we should consider changing it to

the electric chair, gas chamber, or injection, or something of that kind?—A. I think that the method of execution should be kept under fairly continual review. I do not feel that I am competent to indicate which is the best way.

Q. So far as deterrence is concerned?—A. I do not think it makes a great deal of difference. It is the execution rather than the method.

By Hon. Mr. Roebuck:

Q. I wondered if the commissioner had considered the relative effect on the public at large, which is a very important consideration, in connection with capital punishment as to whether the practicality of the execution does more harm to the general public than the less spectacular method of life imprisonment?—A. I do not think that it does enough harm or has enough influence that it should affect the treatment because murder in itself is a nasty and harsh thing, and the method of punishment, to my mind, must also be nasty and harsh.

Q. The question of degrees of murder was already asked you, and, of course, we have degrees of murder; we do not define it so, but we have. One way in which we have gotten away from too drastic enforcement of the law is the alternative of manslaughter. Now, that has gone a great distance in softening the administration of the law of murder. But what do you think of giving a little wider scope to the judges and juries defining first degree murder as that first type of murder in which we think the man ought to be hanged and other types in which there may be some mitigating circumstances where the whole general picture may not be so vicious. At the present moment that is now exercised by the executive. Would it not be better to have it exercised in public by the juries and the courts rather than behind closed doors by people who were not there and have not heard the evidence?—A. There are a good many considerations, naturally, on that question, but I, to answer it shortly, feel that the present machinery is working and I have not been convinced that anything proposed as an alternative would be better.

Hon. Mr. ROEBUCK: That is all.

By Mr. Winch:

Q. I just have two questions. One is for a greater clarity of a question already asked. Commissioner Nicholson said he was afraid that if the capital punishment was removed in Canada that, as water finds its own level, we would have an influx into Canada of the professional criminals from the United States. If that is correct, I would like to ask the commissioner if he has any information, or has he heard or seen any indication, that there has been an influx of the professional criminals from the states of the United States that have the death penalty into those states in the United States that have not?—A. No. I am afraid, Mr. Winch, I have not.

Q. The only other question, Mr. Chairman, is on the matter of corporal punishment. The commissioner definitely states that he is in favour of the retention of corporal punishment, both in the hands of the judge in sentencing and for purposes of discipline in prisons. The other day before this committee we had as a witness a warden of a provincial jail who has had 20 years in penology in Saskatchewan and in British Columbia, and from his experience he stated that he had not found that the imposition of corporal punishment in any way acted as a deterrent; that it very definitely created an emotion of opposition and antagonism in the majority, or in a great number, but in particular on the youthful offenders, and it was his experience that a great many of those who had the corporal punishment inflicted became recidivists. Has the commissioner any knowledge or personal experience that would indicate that the experience of this man in 20 years in penology in Canada is incorrect?—A. I read the evidence referred to carefully and I appreciate that there is

a great deal of experience back of it, and I would certainly not say it is incorrect because this is a matter of opinion. I have merely answered—or prepared my paper—as to what my view is. I have said that I feel that it should be imposed at the discretion of the court and for cruel, vicious crimes. I mean the crimes of the bad hoodlum type, where the boy threatens to become incorrigible, and I draw attention to the word “threatens”. I do not think there is much point in punishing one already considered incorrigible. But I feel in regard to a certain type of bad boy that a whipping does serve a purpose in relation to a certain type of crime; I mean those crimes such as assault in connection with robberies where old people are beaten up by bad youths, and the type of indecent assault where a number of boys—young men—attack a girl. I think that that type of crime, juvenile gangsterism, is a crime where a whipping probably offers some hope of scaring the boy away from the crime and away from a life of crime.

Q. That is the point on which I admit I am confused. The commissioner makes it clear that he only thinks it should be used on a certain type of criminal, that is the brutal and vicious type. The commissioner must have something on his mind in this; I would like to get it clear. Why do you think that corporal punishment is any use on the type of person who will commit that type of a crime? Does it not seem to axiomatically follow that a person of that mentality is exactly the type of person that that type of punishment will not have any beneficial effect on?—A. To the really hardened young criminal I think it is very doubtful that it will have an effect, but, to those hanging on the fringe of juvenile gangs it may be a check on their being eventually committed to a life of crime, and I feel that that is the type that may be served by a good severe whipping. I know that is contrary to views expressed by social workers, but I can only say that it is my honest opinion.

The PRESIDING CHAIRMAN: Now, Mr. Brown.

By Mr. Brown (Brantford):

Q. Mr. Commissioner, would you be in favour of a national lottery in Canada?—A. I must ask to be excused from answering that, because my force does serve in three different areas of enforcement in the country. I think the entire coverage of lotteries—if that is the ultimate arrangement—should be controlled in some manner so that the thing does not go too far; but as to whether it should be national, provincial, or municipal, or administered in some other way, I am afraid that perhaps I have not thought the thing out thoroughly enough, and that the views which I might express might perhaps get me into trouble with the people with whom my force has to work.

Q. Have you any practical views as to how far we should go in opening up the matter of legalized lotteries, other than what you have already said?

The PRESIDING CHAIRMAN: You mean as to money limits?

By Mr. Brown (Brantford):

Q. Yes.—A. I think the objective, first of all, should be very clear, that is, to stop this illegal gambling or the marginal type of gambling, where it is always a question as to whether or not it is an offence. I think that should be the clear objective. I think methods of control are available. For instance, if a distinction could be drawn between the amount of money taken in and the amount of money distributed and the profit limited, it would take away the incentive. I think that offers itself as the one method of control. As to the frequency of lotteries or to the extent to which they should be permitted to operate, again I think it should be a matter of what the public seems to want, and with the main objective of getting clear of these frauds and marginal games.

The PRESIDING CHAIRMAN: Now, Mr. Boisvert:

By Mr. Boisvert:

Q. Is it not a fact that criminality is increasing both in the United States and Canada?—A. Yes, incidence rate of crime is increasing in both countries. The PRESIDING CHAIRMAN: Mr. Shaw.

By Mr. Shaw:

Q. Mr. Chairman, I have two or three questions. I would like to ask the commissioner if he stated that he thought it was impossible to administer the law as it stands today with reference to gambling? Would you say it was impossible?—A. I think my exact words were not quite that blunt. I think I said:

So long as this is the public attitude I think we might as well be realistic and admit, as with prohibition, that good enforcement under our present laws is unlikely, if not impossible.

Q. Would you agree that the situation which exists today with respect to lottery causes disrespect for the law?—A. That is my feeling.

Q. And would you suggest, if there is disrespect for the law in relation to gambling, that that disrespect might even go beyond the field referred to as gambling?—A. Yes.

Q. You refer to pari-mutuels as a possible method of handling lotteries. What has been the experience of your force with respect to pari-mutuels? Have you had many complaints with respect to any dishonesty that might have crept into their operation?—A. I can think of no complaints in that respect.

Q. You feel, therefore, that it would be a very likely way by which you could handle them satisfactorily, that is, as we handle pari-mutuels today?—A. That procedure is working, administratively, in a very satisfactory way.

Q. Now, with respect to capital punishment, you laid emphasis on the young offender, the hoodlum. Would you believe it possible for us to legislate effectively in this field? Let me make it quite clear; could we write a law in such a way as to make it applicable to certain persons and not to others? Or would you think it is only possible to have a penalty for an offence regardless of the age of the offender?—A. No. I think a limit could be set. For instance, there is a section in the Code now which just simply states that whipping shall not be imposed with respect to women. That is a very simple and straightforward statement, and I think, if it were desired, such a limit could be set for men.

Hon. Mrs. HODGES: What age does one have to be in order to be amenable to corporal punishment?

The PRESIDING CHAIRMAN: That varies.

The WITNESS: I think that question is a difficult one to answer, but I think that 25 would not be too far out.

By Mr. Shaw:

Q. Would you state, commissioner, that insofar as the repeater is concerned, that is, the hardened criminal that corporal punishment should not be used except as a disciplinary measure, in the prison?

The WITNESS: That is my view.

Q. And with respect to capital punishment?—A. May I interject?

Q. Yes.—A. With respect to the habitual criminal, the provisions of the Code seem to me to take care of the incorrigible or the recidivist, the person who is firmly on the way.

Q. In other words, you feel that corporal punishment does have its place in the reformatory field?—A. Yes.

Q. Outside of the disciplinary measures in the prison?—A. Yes.

The PRESIDING CHAIRMAN: As a matter of sentence, you mean?

By Mr. Shaw:

Q. Yes. I see. In relation to capital punishment, in your reference to persons who committed murder, apart from those who were gangsters or professional criminals, do you think that capital punishment has a deterrent effect at all, apart from the ones you categorize as professional or gangster types?—

A. I do not know if I can answer you directly, but perhaps this will help: I would put it this way: that if it is accepted that there may be a deterrent effect upon the professional criminal, but questionable whether there is a deterrent effect upon the other types, then if capital punishment is abolished, the effect would be to sacrifice the additional number of people who would become victims to the professional criminals. The merchant who interrupts the professional criminal when he is breaking into his shop, the taxi driver who is held up in a getaway and then shot, and the policeman who comes by while the crime is under way; the effect I say would be to sacrifice those people in order to save the other type of murderer, the husband who kills his wife because he is tired of her and wants to marry another woman, or the rapist who kills his victim so that he will not be identified. It would be a matter of sacrificing one group in order to save the other. I do not think that I could recommend it.

Mr. FULTON: The saving would be questionable, anyway.

By Mr. Shaw:

Q. Shortly after midnight, last night, a certain person was executed. Nevertheless, over the past week-end we were told by the press that four murders had been committed, right on the eve of an execution. That has caused me to think about the deterrent effect of capital punishment within a certain field, that is, the non-professional, gangster-type, criminal field. That is all.

The PRESIDING CHAIRMAN: Now, Mr. Brown.

By Mr. Brown (Essex West):

Q. For purposes of a background, I wonder if the commissioner could tell us how long he has been in the Royal Canadian Mounted Police?—A. I am in my thirtieth year of service.

Q. Did you practise your vocation before that time?—A. No.

Q. You have been stationed in how many provinces?—A. Three.

Q. Could you give us which ones?—A. New Brunswick, Nova Scotia, and Saskatchewan.

Q. You have been in the east and the west and now you are in Ontario. Have you ever witnessed a hanging?—A. No.

Q. Did you not say that according to our present practice it is very unlikely that an error could be made in capital punishment? I believe you will agree that in other matters frequently there have been mistakes made. After all, we see that judges and juries are human and we are subject to error; and with our method of presenting evidence to the court, we are human beings and we are all subject to error. You know of certain cases recently in Ontario where there have been errors. You are aware of these?—A. Yes. You are not speaking of capital cases?

Q. No. There are other offences where the persons have been convicted on the evidence and have been sentenced to jail and have served for some time until new evidence was eventually brought out and they have subsequently been released. You know of such cases?—A. Yes.

Q. Do you know of any cases of capital punishment in other countries where errors have been made?—A. Yes, there have been cases in other countries.

Q. You would agree then that if the punishment had been life imprisonment, and if new evidence had been brought out subsequent to the trial and conviction, that there would be a chance of rectification, would there not?

—A. Yes.

Q. Whereas, if the victim was hanged, it is rather unlikely that rectification would take place?—A. Yes.

Q. Now, then, you have also said that gangsters might swarm into Canada from the United States and ply their vocation in Canada if they found it to be profitable. I live on the border. As a matter of fact I think my constituency is the only constituency in Canada—this is not for publicity purposes—which is south of the United States. We are on the border. Do you not think that a good, solid, conscientious police force is a good deterrent for such activities? In fact, we have proven it in our own area. I answer the question before you answer it.—A. You mean that certainty is better than severity.

Q. Do you not think that a good police administration, a good well-trained police force, is a much better deterrent than passing laws which are probably not too well administered?—A. I think that good police administration is certainly a deterrent. I would not attempt to say that severity is better than certainty, but it does seem to me that severity is also necessary.

Q. And it is usually certain?—A. If it were to avoid an influx of this type of people; I do not suggest that they are all suddenly going to pack up and come to Canada. But I can say that they are conscious of the severity of our law as well as of the certainty of its enforcement.

Q. You also spoke about the bootlegging days. Have you ever had any experience on the border in the bootlegging days?—A. I had a great deal of experience in the maritimes, on the seacoast.

Q. I live at a border point too. Do you know that in the United States many of the states do not have capital punishment?—A. Yes.

Q. And Canada has had capital punishment for murder, but there have been murders committed on the border?—A. Oh, yes.

Q. Many of them.—A. I do not recall many, but I do recall some.

Q. Well, there have been a few down our way and yet the neighbouring states have not had capital punishment, although we have had capital punishment.

Mr. SHAW: On a point of order, Mr. Chairman, has Mr. Brown any objection to identifying his constituency?

Mr. BROWN (*Essex West*): I have already done so.

Mr. SHAW: You said it was south of the United States.

Mr. BROWN (*Essex West*): Well, in case there is any doubt, let me say that it is Windsor, Ontario.

The PRESIDING CHAIRMAN: I do not think there is any doubt about it. It is very well known because it is so well represented.

By Mr. Brown (*Essex West*):

Q. You also said that we have not yet reached the time for the abolition of capital punishment. Do you believe that we will eventually come to the time when we will ask for the abolition of capital punishment?—A. I would not like to be a prophet one way or another. I think we have made some progress in social measures and I hope that in the years to come we may reach it.

Q. I am not trying to be facetious, but you think that we have made some progress. You believe it is really progress. You will recall that in the dark ages, for instance, 100 years ago, hanging was imposed for every minor offence.

Since we do not hang for such minor offences today; therefore, there is progress?—A. Yes, indeed.

Q. And you think that in the future we might progress to the extent of being able to eliminate capital punishment?—A. That would be an excellent objective to work for, provided society allows it, or when it allows it.

Q. Now then, with respect to lotteries, you believe that there should be some extension of public lotteries or gambling? I am not just sure how to put it—you believe there should be some extension of public gambling or lotteries in Canada and you think it would be desirable from the police point of view because you could not enforce the present law. Is that right?—A. Well, because there is difficulty in enforcing it and in maintaining a good standard of enforcement.

Q. You think it would eliminate a great deal of the illegal gambling that is taking place today. Is that a fact?—A. Yes.

Q. Well, if a person is taking arsenic, would you say that he should be stopped or encouraged?

Mr. FULTON: It all depends on the person.

By Mr. Brown (Essex West):

Q. Suppose a person is going to commit suicide. Do you think that he should be stopped or encouraged?—A. I think he should be stopped.

Q. Do you think that lotteries are good for the economy of the country?—A. Let me answer you question this way: I think—I am sorry if I appear to be avoiding it—but I can only answer your question this way.

Q. I am not trying to put you on the spot. We are simply trying to learn things, to find out what people in such positions as yours believe and think.—A. In the first place, I dislike a law that is not generally popular. I feel that the present gambling laws are not generally popular. I think we might just as well accept that and be realistic about it. I have said that I dislike the idea of public gambling. If the public view or public opinion were different and also reflected a dislike for public gambling I think it would be a fine thing, but that is not the situation.

How many people welcome the opportunity to buy an Irish Sweepstake ticket? So long as that is the situation, I believe we might as well be realistic about it. Moreover, I, for one, firmly believe that we cannot amend public opinion by legislation. There it is and it must be accepted.

Q. There are a great many illegal lotteries, and we have been told that hundreds of thousands of lottery tickets are seized every year and that, of course, means just so much money going into the pockets of the promoter.—A. Yes.

Q. In other words, it is money which is taken out of the regular economic stream of the country?—A. Yes.

Q. It is just sucked off?—A. Yes.

Q. Have you any idea how much money that would involve?—A. No. I do know that hundreds of thousands of dollars worth of tickets have been seized. How much money that means, however, I do not know.

Q. Do you know how many of those tickets have actually been turned into cash?—A. The greater part of them, probably.

Q. You say "the greater part of them, probably"—A. Yes; most of them were seized as the counterfoils coming back.

Q. And that money is just simply lost?—A. Entirely.

Q. For instance, in the case of Irish Sweepstake tickets, that money goes out of the country.—A. Yes.

Q. So that money does not do us any good?—A. That is right.

Q. It does not do us any good because it is going out of the country and we do not get any return for it?—A. Except the winners.

Q. Except the winners; but the winners only get a small percentage, do they not?—A. I do not know the percentage.

Q. And even the money which goes to the winners—have you had any experience with people who have won on a sweepstake ticket?—A. Do you mean: if I knew them personally?

Q. Yes.—A. No.

Q. Well, we have had evidence given here that those who have won have not benefitted in the long run.—A. I could not question that, because I am not in a position to do so.

The PRESIDING CHAIRMAN: Was it suggested because it was sweepstake money? Suppose they had got money from any other source? Would they have done any better?

Mr. BROWN (*Essex West*): No. I would say it was because they got something for nothing.

Mr. SHAW: Suppose they had inherited it?

The PRESIDING CHAIRMAN: That is what I said.

Mr. BROWN (*Essex West*): Yes, suppose they had inherited it; they would not have known how to handle it.

The PRESIDING CHAIRMAN: The chances are that they would not know how to handle any money.

Mr. BROWN (*Essex West*): That could be so; but it was a beneficial effect, according to the evidence.

Mr. FULTON: That sounds like a strong argument in favour of confiscating succession duties, and I do not agree with you.

By Mr. Brown (Essex West):

Q. We are trying to find out what possible means there are—either of extending lottery laws, or limiting them. You said something about national lotteries. Were you in favour of national lotteries?—A. I said I would prefer not to answer that question, if you will please excuse me.

Q. I am sorry. Have you seen the effect of the operation of national lotteries in any other country?—A. Oh, in a small way I have seen it in France.

Q. What was the effect there?—A. Well, one thing I dislike about such a broad lottery which covers the whole country, is the kiosk selling lottery tickets on each corner. I personally dislike it.

Q. And I agree with you.—A. And I dislike the set-up.

Q. You say: "selling lottery tickets on each corner"; is there a possibility in these national lotteries of the same thing which we have in the sweepstake tickets, of fake tickets being sold?—A. I suppose there is a possibility, yes.

Q. Could you tell us the amount of revenue in France which went to the national treasury by reason of these lotteries?—A. No, I could not.

The PRESIDING CHAIRMAN: Mr. Roebuck.

By Hon. Mr. Roebuck:

Q. Do you not think it would help if we could abolish the distinction between the persons who are allowed to conduct lotteries, such as fall fairs?—A. Yes, that is one of the anomalies.

Q. We allow it, too, when religious people undertake it in their bingos. In such cases the police keep away. Maybe there are other illustrations as well of it being a crime in one case and not a crime in another.—A. That is right.

Q. If we made a start by getting rid of that distinction, do you not think it would help?

The PRESIDING CHAIRMAN: Help in which way?

Hon. Mr. ROEBUCK: In getting rid of the anomalies.

The PRESIDING CHAIRMAN: But in which way?

Hon. Mr. ROEBUCK: I would abolish the exceptions made for fall fairs.

The PRESIDING CHAIRMAN: You would just have a general law prohibiting such things?

Hon. Mr. ROEBUCK: Yes, so that everybody would get the same chance. I would have no "fish of one and flesh of another". If you have got to have lotteries in order to satisfy a "depraved" public taste, well then, let us all have lotteries.

The PRESIDING CHAIRMAN: You have got "depraved" in quotation marks, have you not?

Hon. Mr. ROEBUCK: Yes.

The PRESIDING CHAIRMAN: I thought so.

By Mr. Thatcher:

Q. I have a follow-up question to one of Mr. Brown's questions. I understood the commissioner to say that he is opposed to the abolition of capital punishment but he said later that he also hoped it would be an objective for the future. Am I correct in that?—A. Yes.

Q. Might I assume then that your main objection to abolition is a matter of timing rather than of principle?—A. Well, taking the present, I have answered in the sense of the present, as the situation exists today.

Q. But you still think we should strive to obtain that objective later on?—A. Yes, but I would not attempt to fix a time and say it should be ten, twenty, or fifty years. I say that surely we could keep, as a social objective, the goal of abolishing capital punishment.

Q. What factors would make it possible to abolish it in the future which do not exist today?—A. Well, a very noticeable lessening of the incidence of crime, and a great deal more public—

The PRESIDING CHAIRMAN: Public support?

The WITNESS: A great deal more public acceptance, and better public behaviour would perhaps indicate that society is getting to the point where we could say: we do not want capital punishment any more.

Q. And a more general appreciation of man's obligations to his fellow men.—A. Yes.

Q. That is one of the things that I am sure will make for the abolition of capital punishment.

Hon. Mrs. HODGES: I noticed that Mr. Brown spoke of his spot on the border.

The PRESIDING CHAIRMAN: Which Mr. Brown?

Hon. Mrs. HODGES: The co-chairman; he spoke of certain states which did not have capital punishment, which impinge rather closely on his part of the country, and that they had not had any noticeable lessening of murders there. In fact, he stated that murders take place there in spite of the fact that some states have abolished hanging.

Mr. BROWN (*Essex West*): I was trying to associate bootlegging and the effect of it upon capital punishment.

Hon. Mrs. HODGES: Did you not say that capital punishment had been abolished in some of those states, yet there had been murders there?

Mr. BROWN (*Essex West*): Yes.

Hon. Mrs. HODGES: Well then, let me ask the commissioner this question: do you not think that there might have been more murders in those other states had it not been for the retention of capital punishment?

The WITNESS: That there might have been more murders?

Hon. Mrs. HODGES: Yes.

The WITNESS: Yes, I would say there might have been.

Mr. BROWN (*Essex West*): Why?

Hon. Mrs. HODGES: Because for just as much reason as abolishing it.

Mr. BROWN (*Essex West*): It is six of one and half a dozen of the other. I agreed with you there.

Hon. Mrs. HODGES: Yes.

The WITNESS: I have actually talked to big smuggling operators in the 1930's who told me that they would not let their men carry arms when they were running cargoes of liquor because they did not want them to become involved in murders.

Mr. BROWN (*Essex West*): Is it not correct in our area that they did carry firearms?

The WITNESS: I know very little of that area, but I do know the other part of the country well.

Hon. Mrs. HODGES: In connection with lotteries, does the commissioner—he is a member of the police force which has federal jurisdiction as well as provincial and municipal—think the position regarding the enforcement of the law on lotteries would be helped if it were enforced a little more consistently all across Canada? I notice in Quebec you have enormous bingo games with enormous prizes which would not be tolerated in British Columbia.

Mr. WINCH: And it is mostly the R.C.M.P. in British Columbia.

The WITNESS: My force operates in certain jurisdictions; other police forces in other jurisdictions. I should not like to attempt any comparison, or a study, of enforcement in other jurisdictions.

Hon. Mrs. HODGES: Even between the R.C.M.P.?

The WITNESS: No.

Hon. Mrs. HODGES: Do you not think that if it were enforced more consistently it would remedy the situation?

The WITNESS: I do not think it would effect public opinion.

By Mr. Winch:

Q. On the same phase, if all these matters are governed by a federal law and if the R.C.M.P. is one force, although operating in varying sectors, just what is the reason—if you can answer—as to why the federal law shall be enforced in a different way in different parts of Canada?—A. Well, of course, the criminal law is a federal law but enforceable by the provinces. The matter rests with the provinces.

Q. That is my point. The R.C.M.P. takes its instructions from the province in which it is operating?—A. Yes, indeed. In any province where we are under contract we act in the same manner as if we were a provincial police force.

Mr. SHAW: Therefore, you cannot have complete uniformity?

The WITNESS: Only if the provinces would get together on this.

By Mr. Fulton:

Q. I have a question first with respect to corporal punishment. You referred to it as a deterrent for young hoodlums who are in danger of becoming incorrigible. Would there be, in your opinion, proper grounds for the belief

that it would also have a deterrent effect on the younger members of the gang, say even those who were not punished themselves but had knowledge that this type of activity leads to physical punishment?—A. Yes, I think it would indeed. The recruits coming along; yes, indeed it would.

Q. With relation to lotteries would you give us either a professional or personal opinion, whichever you prefer, as to the question of whether carrying on gambling activities even if they are under the law today tends to breed a class of people who become criminals and tends to foster gangsterism and corrupt practices?—A. I do not think buying an Irish sweepstake ticket does foster other illegal activities or make the person a criminal. I hope not in any case.

Q. We have heard the opinion expressed before that there tends to be built up around the activity of the carrying on of lotteries by those who carry them on, not those who buy the tickets, and bingos and other forms of illicit or semi-illicit gambling, a gangster class. It was suggested that, if we enlarge the opportunities for carrying on organized gambling, we would be providing greater facilities for the spread of gangsterism. Touching that aspect which I had in mind, would you care to express an opinion as to the incidence of gangsterism as coupled with the incidence of gambling activities?—A. I think that any field of gambling presents a very attractive target to gangsterism. They are ready to break in on it whenever there is an opportunity. Our present situation, I think, encourages that or allows it. They are watching for every opportunity to set up fake draws and to capitalize on the desire to gamble.

Mr. BROWN (*Essex West*): If we are to accept an extension of lotteries, there will be a greater tendency to gangsterism.

The WITNESS: No. If we set up a carefully controlled system I think administratively it could be handled so that gangsters and criminals do not take part in it. Our pari-mutuel system has operated for years and I know of no serious reflection on the way it has operated. Nothing in the way of gangster control or crookedness has crept in. There must be a way of setting up, administratively, a machinery that will as effectively take care of the other types of gambling.

The PRESIDING CHAIRMAN: And without making it a national scheme.

The WITNESS: Not necessarily a national scheme, no.

By Mr. Blair:

Q. With respect to corporal punishment you suggest it be confined primarily to the young offender. Do you suggest also that the range of offences for which corporal punishment should be imposed should be extended?—A. Upon these younger criminals?

Q. Yes.—A. I think it is pretty adequately covered now.

Q. At the present time, roughly speaking, it is confined to cases of aggravated robbery or violent assault?—A. Yes and certain sexual crimes.

Q. Yes.—A. I do not advocate necessarily that it should be applied in other than the way I have mentioned as a deterrent upon the bad young offender. I have not attempted to say in detail just where the line should be drawn.

Q. And you think that probably the present scope of corporal punishment in the Criminal Code would meet the suggestions you have in mind?—A. Yes.

Q. Commissioner Nicholson, with respect to capital punishment, there has been a discussion here before of the conduct of criminal trials and I wonder whether you would be prepared to comment, from your experience, on the adequacy of the defence which is made for persons charged of capital crimes?—A. In the cases I have had very close contact with I know of no case where I think it could be fairly said that the accused suffered through lack of adequate defence.

Q. Would you care to comment on the suggestion that juries frequently convict of manslaughter in circumstances where murder alone was indicated?—A. I prefer not to comment on that.

Q. Would you be prepared to comment on this, that there may be an increasing number of instances where juries convict on the lesser count of manslaughter than murder?—A. If you do not mind I would like to check some statistics which might provide a bit of an answer.

Q. Perhaps I should have raised my question in another way and asked whether there was any indication that this practice of juries was tending to increase.—A. I think—looking quickly at some statistics—we do not see an indication of it, but perhaps the figures are not extensive enough to be conclusive.

Q. I think I should withdraw my earlier question. On the basis of your experience do you see any tendency on the part of juries to increase convictions of manslaughter rather than murder?—A. No, I do not think I see any tendency, but I would like to say that that should not be taken as a conclusive answer. I have made no analysis of it.

Q. It is possible that if the thing were very patent that it would have come to your attention.—A. Yes, I think probably it would.

Q. With respect to lotteries, what type of fake lotteries have you in mind as representing an abuse of the present law?—A. Well, a draw based upon any national or well known matter lends itself to setting up as a lottery.

Hon. Mr. ROEBUCK: A horse race?

The WITNESS: Yes. All sorts of things; boat races or anything which attracts widespread attention can be used.

By Mr. Blair:

Q. What particular problem do these fake lotteries present? Why is it difficult to get at them?—A. In the first place there is very little public interest or public support.

Q. For a prosecution?—A. For the police when they are attempting to round the sellers up. In fact, the normal thing is that the public do not want to help them.

Q. Even where the purpose of the lottery is fraudulent?—A. The sellers do not admit that it is fraudulent and the buyers do not know.

Q. Then perhaps it might be fair to ask a more general question. Is it quite clear that the real difficulty in enforcing this law is that public opinion appears to favour lotteries of some kind or another?—A. Yes, indeed.

Q. And the problem you face in enforcing lottery laws does not arise from the partial exemptions given to certain groups which may induce certain other people to promote lotteries which are illegal.—A. I am sorry, I did not get that.

Q. Some people have suggested that the difficulty in enforcement of the present law arises from the practical fact that the police have to distinguish between the exempt lotteries and the ones which are clearly illegal.

Hon. Mr. ROEBUCK: Some of the difficulties.

The WITNESS: It may be an obstacle to good enforcement, but the principal one is the lack of interest on the part of the public.

By Mr. Blair:

Q. Perhaps you would like to comment again on the suggestion made that enforcement would be made more easy if all the exemption provisions were removed from the Criminal Code?

The PRESIDING CHAIRMAN: It would solve the problem if you have public support for the thing.

By Mr. Blair:

Q. I would like to ask the commissioner to put his view on record. The suggestion has been made on several occasions by other witnesses that the real answer to this problem is to remove all the exemptions and make it easier for the police force to enforce the prohibition against lotteries?—A. I think the exemptions might be removed but some other machinery would have to take their place.

Hon. Mr. ROEBUCK: I would like to know what the commissioner really does suggest.

The PRESIDING CHAIRMAN: He said licensing, or by way of charters, or something of that sort.

The WITNESS: I said that I think that it is not beyond the bounds of possibility to set up machinery that would do it. Control might be exercised through national organization; it might be exercised through a charter or licence. I was not more specific than that. A number of measures that suggest themselves are audits, controls on the size of the pot, percentage of distribution.

Hon. Mr. ROEBUCK: That might prevent a certain number of frauds where people just carry money away; the system of audit might prevent that.

The PRESIDING CHAIRMAN: Or the limitation on participation by those who manage the operation.

Hon. Mr. ROEBUCK: Unless you have a different proposition, you have some people licensed to do something and others are not allowed to do it under the Criminal Code and there you are getting into "flesh of one and fish of the other".

Mr. SHAW: You have it now.

Hon. Mr. ROEBUCK: Yes. You have it now. Is it not a serious objection?

The PRESIDING CHAIRMAN: Anytime you provide saving clauses anywhere, that is the effect of it.

Hon. Mr. ROEBUCK: Usually, yes.

By Mr. Blair:

Q. I wonder whether the commissioner has given any study to any of the schemes developed in the various American states for the partial legalization of lotteries and whether he has any comment on how effective those have been in aiding enforcement of the law?—A. It would not be correct for me to say I have given it any study. I have heard of them. I have read a bit about this, but I do not think I know enough of the effect or the result to comment in any comprehensive way on it.

Mr. SHAW: May I ask a question.

The PRESIDING CHAIRMAN: Yes.

By Mr. Shaw:

Q. We have certain of these carnival groups at large from fair to fair and from stampede to stampede, and do they cause the force much difficulty? I ask that because of a near riot in Calgary when it was concluded that it was completely dishonest. Do you have much difficulty with those?—A. We have some difficulty, yes. Periodically there is an outbreak because the public find that the wheel of fortune is fixed.

Q. What effort is made by your force to ascertain whether or not they are operating honestly?—A. I could answer that in the following way: in the first place, they operate in these small agricultural fairs as the law allows, presumably under a permit of some sort, and presumably the fair board and management have passed them as being permitted to operate on the midway, and perhaps, depending upon complaints, we temper our check.

Q. Some of them operate not in association with a fair. For example, I know in my own town maybe once a year one of these little fairs will come in and set up on the edge of town, but under the auspices of no organization. I have often wondered what effort is made to ascertain whether or not they are operating legal games?—A. The effort differs in areas and may depend somewhat on how busy the police are on other matters.

Q. There is no set pattern?—A. No particular set pattern.

The PRESIDING CHAIRMAN: I would like to thank Commissioner Nicholson on behalf of the committee.

